

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

STATE OF WASHINGTON, et al.,

PLAINTIFFS,

v.

U.S. DEPARTMENT OF  
TRANSPORTATION et al.,

DEFENDANTS.

NO. 2:25-cv-00848

DECLARATION OF  
CHRISTOPHER KEARNS IN  
SUPPORT OF PLAINTIFFS'  
MOTION FOR PRELIMINARY  
INJUNCTION

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1

ATTORNEY GENERAL OF WASHINGTON  
Environmental Protection Division  
800 Fifth Avenue STE 2000  
Seattle, WA 98104  
(206) 464-7744

1  
2 I, Christopher Kearns, declare under the penalty of perjury pursuant to 28 U.S.C. §  
3 1746 that the foregoing is true and correct:  
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5 1. I am a resident of the State of Rhode Island. I am over the age of 18 and have  
6 personal knowledge of all the facts stated herein, except to those matters stated upon information  
7 and belief; as to those matters, I believe them to be true. If called as a witness, I could and would  
8 testify competently to the matters set forth below.

9 2. I am currently employed by the Rhode Island Office of Energy Resources  
10 ("OER") as Acting Energy Commissioner.

11 3. As Acting Energy Commissioner, I am responsible for the implementation of the  
12 state and federal energy policies and programs and staffing of the Rhode Island Office of Energy  
13 Resources.  
14

15 4. OER is responsible for the oversight and implementation of the State's clean  
16 transportation programs, including the implementation of the National Electric Vehicle  
17 Infrastructure ("NEVI") Formula Program.

18 5. Rhode Island is firmly committed to reducing transportation-sector greenhouse  
19 gas emissions and advancing transportation electrification as a critical element of its broader  
20 climate strategy. Transportation emissions account for over thirty percent (30%) of Rhode  
21 Island's total greenhouse gas emissions, making it the largest single source of emissions in the  
22 State.  
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1           6. Rhode Island administers multiple incentive programs, including the DRIVE EV  
2 Rebate Program and the PowerUpRI Residential Charger Rebate Program, to encourage electric  
3 vehicle (“EV”) adoption.

4           7. The State's Act on Climate, enacted in 2021, mandates that statewide greenhouse  
5 gas emissions reach forty-five percent (45%) below 1990 levels by 2030; eighty percent (80%)  
6 below 1990 levels by 2040, and that the State achieves net-zero emissions by 2050. *See* R.I. Gen.  
7 Laws § 42-6.2-9. This drives a need to decarbonize the transportation sector in support of the  
8 State’s efforts to combat climate change.

9           8. The State has also adopted California’s Advanced Clean Cars II (ACC II) and  
10 Advanced Clean Trucks (ACT) regulations.

11           9. Rhode Island actively coordinates with federal, regional, and municipal partners  
12 to accelerate EV market growth and ensure equitable access to clean transportation technologies.  
13 The State views EV infrastructure as essential to achieving its climate, equity, resilience, and  
14 economic development objectives.

15           10. Like many states, Rhode Island has expected the NEVI Formula Program  
16 established in the Infrastructure Investment and Jobs Act (“IIJA”) to play a critical role in the  
17 State’s ability to transition to electrification of vehicles. *See* IIJA, Pub. L. No. 117-58, 135 Stat.  
18 429 (2021).

19           11. The IIJA allocated \$5 billion over federal fiscal years 2022 - 2026 for the NEVI  
20 Formula Program to fund strategic deployment of EV charging infrastructure. The Federal  
21 Highway Administration (“FHWA”) administers the NEVI program. Each state is required to  
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1 submit a State Electric Vehicle Infrastructure Deployment Plan (“State Plan”) for each fiscal  
2 year describing how the state intends to use the NEVI funds.

3 12. The IIJA further requires the Secretary of Transportation, within ninety (90) days  
4 of the statute’s enactment and in coordination with the Secretary of Energy, to develop “guidance  
5 for States and localities to strategically deploy electric vehicle charging infrastructure” consistent  
6 with the NEVI Formula Program provisions of the IIJA (“NEVI Formula Program Guidance”).  
7 FHWA issued NEVI Formula Program Guidance on February 10, 2022, and has updated the  
8 guidance annually.  
9

10 13. Rhode Island prepared and provided to the FHWA its State Plans for fiscal years  
11 2022-2025 describing how it intended to use its share of funds to carry out the NEVI Formula  
12 Program.  
13

14 14. The State of Rhode Island submitted and received approval for three NEVI Plans.  
15 The Fiscal Years 2022–2023 Plan, approved on September 14, 2022, focused on achieving full  
16 build-out of I-95 with two new DCFC installations at the Ashaway and Warwick Park & Ride  
17 locations, addressing infrastructure gaps, developing maintenance strategies, and coordinating  
18 with regional partners. The Fiscal Year 2024 Plan, approved on September 29, 2023, highlighted  
19 Phase 1 construction progress, emphasized expanded public engagement particularly with  
20 disadvantaged communities, and began laying the groundwork for a statewide competitive grant  
21 program to expand EV infrastructure beyond the corridor. The Fiscal Year 2025 Plan, approved  
22 on November 15, 2024, documented Rhode Island's certification as the first state to achieve full  
23 corridor build-out and launched a \$10 million Request for Applications (RFA) competitive grant  
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1 program to support further statewide EV charging infrastructure deployment with a focus on  
2 equity, workforce development, resilience, and public-private partnerships.

3 15. Rhode Island's NEVI Plans were designed to establish a reliable, accessible, and  
4 interconnected EV fast-charging network along critical transportation corridors, beginning with  
5 the designated Alternative Fuel Corridor (I-95) and expanding statewide. The Plans aimed to  
6 reduce range anxiety, promote EV adoption, support greenhouse gas emissions reductions,  
7 prioritize investments in disadvantaged communities, and prepare the State's workforce and  
8 infrastructure for a sustainable, zero-emission transportation future.  
9

10 Each Plan was sequentially structured to build upon prior progress, moving from corridor  
11 compliance to equitable and sustainable statewide EV infrastructure expansion.  
12

13 16. The FHWA approved Rhode Island State Plans in letters dated September 14,  
14 2022, September 29, 2023, and November 15, 2024 ("State Plan Approvals"). Each letter  
15 explicitly stated that "[w]ith this approval, Fiscal Year [ . . . ] funds are now available to Rhode  
16 Island for obligation."

17 17. For Fiscal Year 2022, \$3,383,835 was made available for obligation. For Fiscal  
18 Year 2023, \$4,869,376 was made available for obligation. For Fiscal Year 2024, \$4,869,410 was  
19 made available for obligation. For Fiscal Year 2025, \$4,869,414 was made available for  
20 obligation.  
21

22 18. Rhode Island has administered NEVI funds in close adherence to federal  
23 guidance. During Phase 1 (Corridor Buildout), infrastructure was deployed through a  
24 competitive procurement process with a selected vendor. The project was fully completed, all  
25 invoices were paid, and all contractual obligations were fulfilled. No pending invoices,  
26

1 encumbrances, or outstanding deliverables remain; the project is fully closed out.  
 2 For Phase 2 (Competitive Grant Program), in November 2024, the State issued a Request for  
 3 Applications (RFA) to allocate \$10 million to eligible public, tribal, higher education, and  
 4 nonprofit entities. Following the issuance of the Executive Order suspending NEVI activities,  
 5 Rhode Island suspended the open RFA process. As of the federal pause and the February 6, 2025  
 6 rescission, no awards, contracts, or purchase orders had been executed.  
 7

8 19. On January 20, 2025, President Trump issued an Executive Order (“EO”) entitled  
 9 Unleashing American Energy. Section 7(a) of the EO directs all agencies to “immediately pause  
 10 disbursement of funds appropriated through” the IIJA, “including but not limited to funds for  
 11 electric vehicles charging stations made available through the [NEVI] Program.”  
 12

13 20. On February 6, 2025, the Rhode Island Department of Transportation (RIDOT)  
 14 received a letter from Emily Biondi, the Associate Administrator for the Office of Planning,  
 15 Environment and Realty in the FHWA, with the subject “Suspending Approval of State Electric  
 16 Vehicle Infrastructure Deployment Plans.”  
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18 21. The February 6 letter informed State Transportation Directors that the new  
 19 leadership of the United State Department of Transportation “has decided to review the policies  
 20 underlying the implementation of the NEVI Formula Program” and was therefore rescinding  
 21 NEVI Formula Program Guidance.  
 22

23 22. The February 6 letter further claimed that FHWA “aims to have an updated draft  
 24 NEVI Formal Program Guidance published for public comment in the spring” and that the  
 25 Agency “will publish updated final NEVI Formula Guidance that responds to comments  
 26 received” after the public comment period has closed.

1           23. Finally, the FHWA informed RIDOT that it would be “immediately suspending  
2 the approval of all State Electric Vehicle Infrastructure Deployment plans for all fiscal years”  
3 and prohibiting future obligations “under the NEVI Formula Program until the updated final  
4 NEVI Formula Program Guidance is issued and new State plans are submitted and approved.”  
5

6           24. The February 6 letter therefore made clear that Rhode Island would not have  
7 access to the net outstanding \$16,150,711.84 which had been made available to Rhode Island  
8 through its State Plan Approvals. FHWA has further given the RIDOT no sense of how it can  
9 apply for the remaining \$4,869,424 it expected to receive for FY 2026.”

10           25. OER, in coordination with the RIDOT, relied and acted upon the FHWA’s  
11 statutory obligation to provide NEVI formula funding consistent with the IIJA’s requirements.  
12

13           Rhode Island, like other states, structured its EV infrastructure planning and  
14 program delivery model around the multi-year receipt of NEVI Formula Program funding. The  
15 State launched its competitive RFA in reliance on the approved Fiscal Year 2025 Plan and in  
16 alignment with FHWA approved strategies and spending expectations.

17           The suspension of the NEVI Program caused immediate disruption by causing the halt  
18 of the open application period, preventing Rhode Island from awarding funds to communities  
19 and public entities that had already invested time and resources preparing proposals. It forced  
20 the closure of an active grant opportunity that many applicants had already initiated or completed  
21 internal reviews for, delaying project pipelines. In addition, it created uncertainty for future  
22 programming, as staffing resources and strategic partnerships had been mobilized under the  
23 assumption of continued funding and plan stability.  
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1 Although no contractual obligations with applicants were entered into prior to the pause,  
2 operational resources and stakeholder expectations were significantly impacted.

3 26. The immediate and long-term harms to Rhode Island resulting from the  
4 suspension of NEVI funds and rescission of plan approvals are significant. Delays in EV  
5 infrastructure deployment jeopardize the State's ability to meet its greenhouse gas reduction  
6 mandates under the 2021 Act on Climate and regional air quality improvement goals. In addition,  
7 future EV charging infrastructure projects are likely to face increased construction, equipment,  
8 and labor costs due to inflation and ongoing supply chain instability.

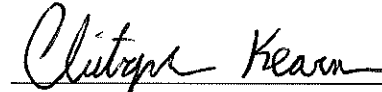
9  
10 The uncertainty caused by the program pause has led to hesitation among private sector  
11 participants and municipal applicants, reducing the pool of capable partners willing to engage in  
12 future solicitations. Workforce development efforts, including EV technician training and  
13 pipeline programs associated with Phase 2 of the program, have also been delayed, undermining  
14 economic development opportunities tied to clean transportation growth.

15  
16 From an administrative standpoint, reopening or redesigning paused solicitations will  
17 require additional State resources and will extend project delivery timelines. Rhode Island also  
18 faces imminent risks, including losing its leadership position in national EV infrastructure  
19 deployment efforts. Prolonged gaps in charging availability may further exacerbate range  
20 anxiety among consumers, slowing broader electric vehicle adoption across the State.  
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1 I declare under penalty of perjury under the laws of the United States that, to the best of my  
2 knowledge, the foregoing is true and correct.

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4 DATED this 5th day of May, 2025, at Providence,  
5 Rhode Island.

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8 Christopher Kearns  
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